

CORTLIN H. LANNIN (SBN 266488)
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, California 94105-2533
Telephone: + 1 (415) 591-6000
Facsimile: + 1 (415) 591-6091
Email: clannin@cov.com

Attorneys for Defendant The Procter & Gamble Company

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TARA AMADO, on behalf of herself, all others
similarly situated, and the general public,

Plaintiff,

v.

THE PROCTER & GAMBLE CO.,

Defendant

Civil Case No.: 3:23-cv-06308-MMC

**NOTICE OF PENDENCY OF OTHER
ACTION OR PROCEEDING**

Pursuant to Civil Local Rule 3-13, Defendant The Procter & Gamble Company (“P&G”) respectfully submits this Notice of Pendency of Other Action to inform the Court that the instant action involves “a material part of the same subject matter” and “substantially all of the same parties” as the following action now proceeding in a different federal court: *Pellegrino v. The Procter & Gamble Co.*, No. 23-cv-10631-KMK (S.D.N.Y.) (Karas, J.) (“*Pellegrino*”).

I. Background

Plaintiff Tara Amado and another individual named Regina Pellegrino filed a complaint against P&G in this forum last year alleging that the inclusion of added sugar in certain Metamucil fiber supplements rendered the labeling of those products false and misleading. *See Amado v. The Procter &*

Gamble Co., No. 22-cv-05427-MMC (N.D. Cal.). Ms. Amado asserted claims under California law on behalf of a California class, while Ms. Pellegrino asserted claims under New York law on behalf of a New York class. On June 8, 2023, this Court granted P&G’s motion to dismiss that complaint, concluding in relevant part that the challenged representations on the Metamucil label were permissible “structure/function” claims and that all of plaintiffs’ causes of action were preempted by federal law. *See Amado v. The Procter & Gamble Co.*, 2023 WL 3898984, at *7 (N.D. Cal. June 8, 2023) (Chesney, J.). Ms. Amado and Ms. Pellegrino declined this Court’s invitation to amend and instead voluntarily dismissed their complaint.

Six months later, Ms. Amado filed the instant complaint against P&G. In this action, Ms. Amado again targets Metamucil and again alleges that its labeling is false and misleading—not because it contains added sugar, but rather because it allegedly contains unsafe levels of lead. *See* ECF No. 1 (Complaint). P&G’s motion to dismiss Ms. Amado’s complaint is currently due by March 4, 2024.

On the same day Ms. Amado filed the instant complaint, her former co-plaintiff Regina Pellegrino also filed a complaint against P&G, albeit in the Southern District of New York. *See* Ex. A (*Pellegrino* Complaint). Ms. Pellegrino’s complaint also alleges that the labeling of Metamucil is false and misleading, and asserts two theories of deception: (i) the same added-sugar theory that this Court already rejected once as a matter of law; and (ii) the same lead-related theory that Ms. Amado is asserting in the instant case. In other words, Ms. Pellegrino’s complaint in S.D.N.Y. involves “a material part of the same subject matter” as this case: the claim that Metamucil is deceptively labeled because it allegedly contains unsafe levels of lead. It also involves “substantially all of the same parties” as this case, as P&G is a common defendant. Across all three of these actions, plaintiffs have been represented by the same counsel, as has P&G.

II. Pending Motion to Transfer or Stay the *Pellegrino* Matter

Given the obvious factual and legal overlap between this case and Ms. Pellegrino’s complaint in S.D.N.Y., P&G has now started the process of moving to transfer the *Pellegrino* action to this forum or,

1 in the alternative, to stay that case pending this Court's disposition of P&G's forthcoming motion to
 2 dismiss Ms. Amado's complaint.¹

3 As is set forth in P&G's letter to Judge Karas, *see* Ex. B, it appears that Ms. Pellegrino is attempting
 4 to resuscitate in a different forum the added-sugar claims that this Court dismissed. "A key interest of
 5 justice factor" in the transfer analysis "is the prevention of forum shopping." *See LegalForce, Inc. v.*
 6 *Legalzoom.com, Inc.*, 2018 WL 6179319, at *3 (C.D. Cal. Nov. 27, 2018) (transferring action to this Court
 7 where defendant "did not get the result it wanted" from this Court and "dismissed that action and refiled
 8 the same case here"). In addition, transfer would prevent duplicative proceedings in two different districts;
 9 and serve the convenience of the parties and witnesses by reducing the burdens of litigating overlapping
 10 cases in two different courts on opposite coasts. In the event Judge Karas declines to transfer *Pellegrino*,
 11 P&G has requested that he stay that case until this Court has the opportunity to rule on P&G's forthcoming
 12 motion to dismiss Ms. Amado's complaint. That would ensure Judge Karas has the benefit of this Court's
 13 analysis of both the added-sugar and lead-related claims that are presented in Ms. Pellegrino's complaint.

14 **III. Current Response Deadline**

15 P&G's current deadline to respond to Ms. Amado's complaint is March 4, 2024. Depending on
 16 how quickly Judge Karas acts on P&G's motion to transfer or stay the *Pellegrino* matter, P&G may seek
 17 Ms. Amado's and/or this Court's consent to extend that response deadline until the venue for Ms.
 18 Pellegrino's complaint is resolved, as additional coordination discussions will be appropriate if Judge
 19 Karas does transfer *Pellegrino* to this Court.

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 21 DATED: February 15, 2024

Respectfully submitted,

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 24 By: /s/ Cortlin H. Lannin
 25 CORTLIN H. LANNIN (SBN 266488)
 26 COVINGTON & BURLING LLP
 27 Salesforce Tower

28 ¹ Before filing a motion, Judge Karas requires parties to file a pre-motion letter seeking a conference.
 P&G has now filed that letter, *see* Ex. B, and is awaiting that court's guidance on next steps.

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*Attorney for Defendant The Procter &
Gamble Co.*